

801.1(b)

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August 3, 1989

VIA HAND DELIVERY

Federal Trade Commission
Bureau of Competition
Premerger Notification Office
(Attention: Ms. Lynn Guelzow)
7th & Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580

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PREMERGER NOTIFICATION
FEDERAL TRADE COMMISSION

This material may be subject to the confidentiality provisions of Section 7(a)(4) or (d) of the Clayton Act which restricts release under the Freedom of Information Act

Re: Request for an Informal Interpretation
re Section 16 C.F.R. §801.1

Dear Ms. Guelzow;

We have been asked on behalf of a client to request an informal interpretation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub.L. 94-435, 90 Stat. 1390 (1976) (codified as amended at 15 U.S.C. Sec. 18A) (the "HSR Act"), with respect to the determination of the "ultimate parent entity" under 16 C.F.R. §801.1 in the following factual situation.

Facts: A company (the "Company"), selling its assets for more than \$15 million, has five shareholders, as follows:

- (1) Shareholders V1, V2, V3, and V4, each of whom holds 25% of the issued, voting shares of the Company; and
- (2) Shareholder NV, which holds 100% of the issued non-voting preferred stock of the Company, which shares are freely convertible to voting common shares of the Company and which, if converted, would comprise 60% of the outstanding voting shares of the Company.

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The Shareholders are unrelated, and no Shareholder has any contractual power to designate members of the Board of Directors. The chart below shows the shareholdings at present and upon conversion of the non-voting shares if that should occur:

	<div>Company</div>				
Shareholders:	V1	V2	V3	V4	NV
<u>Current Holdings:</u>					
Voting Common	25%	25%	25%	25%	0
Non-Voting Preferred	0	0	0	0	100%
<u>Upon Conversion of Preferred:</u>					
Voting Common	10%	10%	10%	10%	60%

Discussion: In my telephone conversation with you on July 26, 1989, I explained to you the above-stated structure of the "acquired person," and we discussed how to determine the ultimate parent entity of the acquired person. You further explained that I could submit a request for an informal interpretation for confirmation purposes and that such request would be circulated throughout your office and receive an expeditious telephonic response.

For that purpose, with reference to the factual situation above, please confirm whether the conclusions below, based on our discussions, properly interpret the HSR Act and the rules and policies of the Federal Trade Commission ("FTC") to determine the ultimate parent entity:

1. Based upon the current shareholdings of the Company, none of Shareholders V1, V2, V3 or V4 has "50% or more of the outstanding voting securities" of the Company; and thus, none of V1, V2, V3 or V4 "controls" the Company under §801.1.

2. Holding non-voting preferred stock and having no voting shares currently, Shareholder NV does not hold "50% or more of the outstanding voting securities" of the Company; thus Shareholder NV does not "control" the Company under §801.1.

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3. The Company itself is the "ultimate parent entity" for the purpose of applying the "sign-of-person" test.

Please contact the undersigned if you have any questions on the facts or the informal interpretations being requested, and when the FTC has completed its review and you can discuss the FTC's interpretations. Thank you for your attention to this matter.

Very truly yours,



called 8-7-89, the
company is its
own UPE under
these facts.
L. Guelzow